

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT,

vs.

VALLEY MOUNTAIN REGIONAL CENTER,

Service Agency.

OAH No. 2023110074

DECISION

A fair hearing was held on November 29, 2023, before Timothy J. Aspinwall, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, by video conference from Sacramento.

The Service Agency, Valley Mountain Regional Center (VMRC), was represented by Jason Toepel, Compliance Manager.

Claimant was represented by his mother, who was assisted by a Spanish language interpreter. The names of Claimant and his family are omitted to protect their privacy and confidentiality.

Evidence was received, the record was closed, and the matter was submitted for decision on November 29, 2023.

ISSUE

Is VMRC required to fund personal attendant (PA) services 30 hours per week (4:00 p.m. to 8:00 p.m., Monday through Friday, and 10:00 a.m. to 3:00 p.m., Saturdays and Sundays)?

FACTUAL FINDINGS

Jurisdiction and Background

1. VMRC provides funding for services and supports to persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act), and other related laws. (Welf. & Inst. Code, § 4500 et seq.) (All statutory references are to the Welfare and Institutions Code, unless otherwise specified.)

2. Claimant is 17 years of age, and will turn 18 in January 2024. He is eligible for VMRC services under the Lanterman Act based on an intellectual disability. He resides with his mother and other family members, including younger siblings who are 4, 13, and 15 years of age. Claimant attends school and has never lived independently.

3. Claimant's mother requested that VMRC fund PA services 30 hours per week (4:00 p.m. to 8:00 p.m., Monday through Friday, and 10:00 a.m. to 3:00 p.m.,

Saturdays and Sundays). VMRC denied the funding request. Claimant timely filed a fair hearing request, by which he appealed VMRC's denial. This hearing followed.

Testimony for Claimant

4. Claimant's mother testified that Claimant needs a PA to assist him with activities such as occupational therapy, art classes, community activities, school dances, and physical recreation such as playing soccer. Claimant also needs help with transportation to and from school, extracurricular activities, and other appointments.

5. Claimant likes to socialize, but he needs to be constantly redirected. A PA would help Claimant engage in more activities and socialize more. For example, he would be able to go to school dances.

6. Claimant's mother also testified that she cannot attend to all Claimant's needs in addition to her other children. For example, Claimant will soon finish high school and wants to go to college. Because of time conflicts, Claimant's mother will not be able to transport Claimant to college and take her youngest daughter to kindergarten. Her other two teenage children also require her attention.

7. Claimant's mother credibly testified that Claimant needs more assistance to integrate into the community than she can provide him. She did not specify what services a PA would provide during each of these requested hours of service, or whether other resources were available to provide the same services.

VMRC's Denial

8. VMRC denied Claimant's request based on a Service Standard Personal Assistance (Service Standard) developed by VMRC and approved for use by the Department of Developmental Services (Department). The Service Standard references

a Consumer Services Assessment Tool (Tool) as a method of calculating the number of hours to be allocated for a PA. Essentially, the Tool is a spreadsheet on which the hours per month of various supports provided to the consumer are added together. From this, the number of hours per month without supports (uncovered hours) are calculated. The Tool specifies 20 percent of the uncovered hours as the recommended number of hours that should be authorized for PA services.

9. VMRC calculated that Claimant has 129 uncovered hours per month. On this basis, VMRC authorized 26 hours per month of PA services, which represents approximately 20 percent of Claimant's uncovered hours.

10. David Vodden, a program manager at VMRC, testified that the VMRC purchase of service committee's denial of Claimant's requested hours of PA support included that he is currently a minor. He does not know whether the committee took into account that Claimant will soon be 18 years of age.

11. Mr. Vodden noted that when a consumer reaches 18 years of age, VMRC expectations of parental support are generally reduced. He also noted that VMRC can make exceptions to the general practice recommended by the Tool of allocating 20 percent of uncovered hours to PA support based on the child/adult status of the consumer and the family circumstances.

12. In Mr. Vodden's view, Claimant's age, family needs, and other circumstances can and should be taken into account during the annual Individual Program Plan (IPP) meeting, which should occur during Claimant's birth month in January 2024.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. In an administrative hearing, the burden of proof is on the party seeking government benefits or services. (See, e.g., *Lindsay v. San Diego County Retirement Bd.* (1964) 231 Cal.App.2d 156, 161.) In this case, claimant bears the burden of proving, by a preponderance of the evidence, that VMRC is required to fund PA services 30 hours per week. (Evid. Code, § 115.)

Applicable Law

2. The Lanterman Act sets forth a regional center's obligations and responsibilities to provide services to individuals with developmental disabilities. As the California Supreme Court explained in *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388, the purpose of the Lanterman Act is twofold: "to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community" and "to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community." Under the Lanterman Act, regional centers are "charged with providing developmentally disabled persons with 'access to the facilities and services best suited to them throughout their lifetime'" and with determining "the manner in which those services are to be rendered." (*Id.* at p. 389, quoting from § 4620.)

3. To comply with the Lanterman Act, a regional center must provide services and supports that "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of

the same age.” (§ 4501.) The types of services and supports that a regional center must provide are “specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of an independent, productive, and normal life.” (§ 4512, subd. (b).) The determination of which services and supports the regional center shall provide is made “on the basis of the needs and preferences of the consumer or, when appropriate, the consumer’s family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.” (*Ibid.*)

4. As set forth in section 4646, subdivision (a):

It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the

preferences and choices of the consumer, and reflect the cost-effective use of public resources.

5. However, a regional center is required to identify and pursue all possible funding sources for its consumers from generic resources, and to secure services from generic sources where possible. Section 4646.4, subdivision (a), provides, in relevant part:

Regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5 . . . the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate. . . .

Analysis and Disposition

6. Claimant's mother clearly and credibly established that additional supports are necessary for Claimant to "approximate the pattern of everyday living available to people without disabilities of the same age." (§ 4501.) However, the evidence did not establish what level or types of supports are currently necessary for

Claimant, and as circumstances and expectations for family supports may change when he reaches 18 years of age in January 2024. Neither party offered in evidence the current IPP. Claimant's needs can and should be fully considered in an IPP meeting in January 2024, in compliance with all applicable laws and policies.

7. Based on the Factual Findings and Legal Conclusions, Claimant did not meet his burden of establishing by a preponderance of evidence that he is entitled to funding through VMRC for personal attendant services 30 hours per week, as requested. Claimant's appeal must therefore be denied.

ORDER

Claimant's appeal is DENIED.

DATE: December 7, 2023

TIMOTHY J. ASPINWALL
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party request a reconsideration within 15 days of receiving this decision (Welf. & Inst. Code § 4713, subd. (b)), or appeal this decision to a court of competent jurisdiction within 180 days (Welf. & Inst. Code § 4712.5, subd. (a)).